

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 97-731 BB

RODNEY MILLER,

Defendant.

MEMORANDUM OPINION
AND
ORDER DENYING MOTION FOR REDUCTION

THIS MATTER is before the Court on Defendant's *Motion for Reduction of Sentence Under 18 U.S.C. § 3582(c)(2)* [Doc. 50]. The Court having reviewed all briefs and pleadings, finds the *Motion* must be Denied.

Discussion

In December 1997, Defendant was indicted for possession with intent to distribute 50 grams and more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) [Doc. 15]. On April 6, 1998, the United States filed an Amended Sentencing Enhancement Information pursuant to 21 U.S.C. § 851 [Doc. 34]. The Information notified Defendant, *inter alia*, that his prior drug felony conviction increased his minimum mandatory statutory term of imprisonment from 10 years to 20 years.

On April 7, 1998, Defendant entered a guilty plea to the Indictment [Docs. 35, 36]. In his plea agreement, Defendant acknowledged that the statutory minimum term of imprisonment was 20 years [Doc. 35]. Because the offense involved 123.3 net grams of cocaine base, Defendant's base offense level was 32. Defendant, however, qualified as a career offender pursuant to U.S.S.G. § 4B1.1. Career offender status resulted in a criminal history category of VI. This resulted in a statutory maximum term of life imprisonment under 21 U.S.C. § 841(b)(1)(A), and bumped the career offender offense level to 37. The resulting guideline imprisonment range was 360 months to life.

This Court sentenced Defendant on July 2, 1998. The Court granted a three level reduction for acceptance of responsibility, which resulted in an offense level of 34. Offense level 34 combined with a criminal history category of VI established a guideline imprisonment range of 262 to 327 months. The Court sentenced at the low end, 262 months.

In summary, based on the career offender guideline, Defendant's original offense of conviction would not allow for a lesser sentence under the retroactive cocaine base offense guideline amendment. *See* 18 U.S.C. § 3582(c)(2); *United States v. Sharkey*, 543 F.3d 1236 (10th Cir. 2008).

ORDER

For the above stated reasons, this Court is not legally authorized to grant Defendant's *Motion* and it must be DENIED.

SO ORDERED this 4th day of December, 2008.

A handwritten signature in black ink, reading "Bruce D. Black", written over a horizontal line.

BRUCE D. BLACK
United States District Judge